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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

10

11 SELINA KEENE, et al., ) No. 22-cv-01587-JSW  
12 Plaintiffs, )  
13 v. ) CASE MANAGEMENT STATEMENT  
14 CITY AND COUNTY OF SAN ) (Docket No. 116)  
FRANCISCO, et al., )  
15 Defendants. ) Date: August 22, 2023  
16 ) Time: 10:30 a.m.  
17 AND CONSOLIDATED CASES. )  
\_\_\_\_\_ )

19

### 1. Protective Order.

20 Mr. Cook is opposed, and will not stipulate, to a protective  
21 order which grants the City the unilateral discretion to classify  
22 information or documentation as confidential.

23 The record is uncontroverted that the City must be expected  
24 to abuse any such discretion. Not only has the City refused to  
25 provide any material information or documentation, but also this  
26 case is at the vanguard of redress for a public policy failure of  
27 galactic proportion and for what was, quite clearly, a crime  
28 against humanity almost, if not completely, unmatched in the

1 history of civilization. The operation of socio-economic  
2 oppression which was run on the American public was exactly as  
3 drawn by the Nazis, all the way down to the massively illegal and  
4 unconstitutional censorship program run out of the FBI and CISA  
5 with their media partners and co-conspirators. (Exhibit A, ¶¶  
6 23-25, at ¶ 25; and see, ¶¶ 9-10.)

7 Therefore, to trust or believe that the City is not highly  
8 motivated to conceal its culpability would be to be naive, at  
9 best.

10 Mr. Cook, however, is not opposed to a legitimate protective  
11 order, provided that it is narrowly drawn. Mr. Cook has made  
12 this clear to the City's lawyers on repeated occasions. If the  
13 City can identify specific information or documentation which  
14 genuinely is, or should be, subject to privacy protections, of  
15 whatever nature, Mr. Cook will agree to reasonable privacy  
16 protections, provided that his right to a full and fair trial is  
17 not prejudiced thereby.

18 Thus, Mr. Cook has proposed, and continues to propose, that  
19 before a classification may be made as to any specific  
20 information or documentation, or any part of any documentation,  
21 the parties must meet and confer about the alleged justification  
22 therefor. If that effort to negotiate a compromise does not  
23 result in an agreement, the particular matter should be submitted  
24 to the court for a decision by the party seeking a classification  
25 of the information or documentation upon the standards set forth  
26 in precedent.

27 In the alternative, if the court will not accord Mr. Cook's  
28 position any dignity, he requests that if a protective order is

1 imposed over his objection, and this protective order grants the  
2 City the discretion to unilaterally classify any information or  
3 documentation as confidential, this protective order should also  
4 provide for the immediate review of all such classifications upon  
5 written submission - so as to insure that a proper record is  
6 preserved for appeal.

7 More specifically, a party objecting to a confidentiality  
8 classification by another party should be permitted to present a  
9 written objection thereto within five court days. Furthermore,  
10 the burden must be on the party who classified the information or  
11 documentation subject to the objection to justify the  
12 classification, and to do so upon the same standard as precedent  
13 has established for the imposition of protective orders ab  
14 initio. Proceedings on all such objections should be on the  
15 record and conducted on the earliest possible date.

16       2. Discovery Issues.

17 Frankly, Mr. Cook is alarmed by the court's suggestion that  
18 consideration should or will be given to means by which discovery  
19 in this important case may be "streamlined" or "expedited." The  
20 indisputable facts are that (1) discovery has been open for  
21 several months, (2) a court order for specific discovery is in  
22 place, (3) several parties have discovery requests pending, and  
23 (4) (a) the City has dragged its feet, (b) abused the discovery  
24 process, (c) knowingly made false promises of performance, and  
25 (d) refused to provide any discoverable material. Under these  
26 circumstances, any abridgement of statutory rights will serve  
27 only to further prejudice the rights of the plaintiffs, including  
28 Mr. Cook, to a full and fair hearing of their grievances.

(a) Streamline?

2                   Mr. Cook's impression is that this may be the  
3                   conception that his access to statutory methods of discovery  
4                   will be restricted or that he will be corralled into a  
5                   collective with the other plaintiffs and their lawyers and  
6                   forced to conduct his investigation while hamstrung by  
7                   whatever investigation the others are doing, or both. Mr.  
8                   Cook objects to any such prospect. Even though Mr. Cook's  
9                   case was consolidated with the others to achieve a  
10                  uniformity of legal rulings, his case is, and remains, as a  
11                  matter of law, a separate case, so that his rights are  
12                  separate from the rights of the plaintiffs in the other  
13                  cases. An order that he coordinate or bind his  
14                  investigation to the investigations being conducted by the  
15                  other plaintiffs would be a prejudicial error.

(b) Expedite?

17                   Mr. Cook doesn't have a firm impression of this  
18 conception. On the one hand, it could mean shortening  
19 response times or making the enforcement process  
20 significantly less hairy, or both. On the other hand, Mr.  
21 Cook is concerned that what the court is actually  
22 contemplating is an extremely short discovery window, which,  
23 in turn, will substantially prejudice his rights. The City  
24 is already highly motivated to conceal the evidence in these  
25 cases. The opportunity in a short discovery window to run  
26 out the clock will supercharge this motivation.

27 Putting the cards are on the table, Mr. Cook  
28 anticipates three rounds of written discovery. The way

1       things are set up by the law and the court's standing order,  
2       each round will take five months, as follows: two months to  
3       get a response, i.e., considering that the City will ask for  
4       an extension, plus two months to get a court order, plus one  
5       month for compliance with the order. As a result, the  
6       discovery window should be fifteen months, which is five  
7       months times three rounds. (Month 3 can start when the City  
8       responds to Mr. Cook's outstanding discovery requests.) Mr.  
9       Cook is open to ideas how he might have the City's good  
10      faith compliance with the discovery laws in less time, but  
11      not to limits on his discovery rights or to his due process  
12      right to fundamental fairness

13           In addition, Mr. Cook anticipates taking about six or  
14      seven depositions. By law, he is allowed seven hours with  
15      each deponent. It is unlikely that he will need the full  
16      seven hours with any of them; however, he will not agree in  
17      advance to limit his allowed time. He must, in the prudence  
18      dictated by the City's behavior to date, anticipate that the  
19      government's witnesses will be uncooperative and that the  
20      City's lawyers will be obstructive. Moreover, Mr. Cook's  
21      rights cannot be limited by the rights of the other  
22      plaintiffs, who may not have precisely the same  
23      investigative objectives in their examinations.

24           In summary, Mr. Cook proposes that probably the best  
25      approach at this time is to wait and see how things go, and  
26      revisit these concepts in about four months. Before the City is  
27      granted even more advantages than it already enjoys, we should  
28      see if the plaintiffs are able to obtain any good faith

1 compliance from the City. If the plaintiffs are, then perhaps  
2 some scheduling type of order may be warranted to move the cases  
3 along somewhat faster.

In the meantime, the court should consider simplifying or abbreviating its enforcement processes, so that the existing discovery disputes and the next several discovery disputes may be resolved more quickly, although, of course, only upon careful and unbiased consideration.

### 3. The Bottom Line.

10 It has been settled for more than one hundred years that  
11 "Men must turn square corners when they deal with the  
12 government." (Rock Island Railroad v. United States, 254 U.S.  
13 141, 143 (1920).) However, it is also settled that "If men must  
14 turn square corners when they deal with the government, it cannot  
15 be too much to expect the government to turn square corners when  
16 it deals with them." (Niz-Chavez v. Garland, 593 U.S. \_\_\_\_ (2021)  
17 [last sentence].)

18       Until the City squares even one of its corners, it is  
19 premature for the court to consider how it might order the  
20 plaintiffs to square each and every one of theirs, and also to  
21 jump through hoops like circus animals as the City's lawyers  
22 propose. Both sides are entitled to a level playing field.

23 | Dated: August 15, 2023

Respectfully submitted,

s/ Hugo Torbet

Attorney for Joseph Cook

## Exhibit A

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## **SPECIAL TEXT NO. 8**

### **STRATEGICAL PSYCHOLOGICAL WARFARE**

**15 February 1949**

**PUBLISHED AT  
THE GROUND GENERAL SCHOOL**

~~RESTRICTED~~

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9. GERMAN GENERAL STAFF PREPARATORY MEASURES. Accepting the accuracy of the above conclusions, the German General Staff approached the study of the problem with characteristic teutonic thoroughness. A vast network of schools and laboratories, staffed with their ablest psychologists and technicians, set about the task of determining how the psychological weapon could best be used to:

- a. Induce the desired frame of mind in the population of the home country and
- b. Frighten, convert, or confuse potential enemies or neutrals.

10. RESULTS OF GERMAN MILITARY RESEARCH. A study of the results and decisions of these German researchers affords us an excellent insight into the evolution of modern scientific propaganda as a part of political warfare, in time of peace as well as in time of war. It was they who handed to Josef Goebbels, when the Nazis came to power in 1933, this fearsome weapon of which he was to make such effective use in the following decade. It was by the study of their methods and techniques that Allied psychological warfare experts laid the foundation which enabled our people to overtake and surpass enemy propagandists in the course of World War II.

11. THE NEW PSYCHOLOGICAL "WEAPON". Applied psychology, co-ordinated with economic and diplomatic operations before the war and with military and political operations during the war, is one of the great new inventions of "total" war; it is an offensive weapon designed to destroy the morale of the enemy's civilian population and armed forces, and to lower enemy prestige in the eyes of neutrals. It knows no limitations in time or space; it is conducted before, during, and after the war against both the home and military fronts of the actual belligerents as well as in the territories of neutral nations.

12. SUCCESS WITHOUT SHOOTING. a. Recurring constantly in the writings of all German commentators on psychological warfare is the statement that the propaganda campaign must be started in peacetime, long before the outbreak of actual hostilities. If the campaign has been carried out effectively, many decisive successes will be scored without firing a shot. We all recall how Hitler occupied the Ruhr with no more than a show of teeth by playing on world sympathy for a "poor, divided Germany" and by arousing in British minds the old specter of French domination of the continent. We also remember how logical the Nazis made the "union" with Austria sound with the argument that a tiny, weak independent Austria—incapable of sustaining herself economically—was a senseless anachronism and that all Europe would be better off if she was a part of a German federation. And by 1938 the might of a rearmed Germany was such a nightmare to all the nations of Europe that Czechoslovakia was overrun simply by rattling the saber.

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safer (and in the vast majority of cases just as effective) to stick to the truth, labelled for what it is and indicating clearly the sources from which it emanates.

23. DISSEMINATION OF PSYCHOLOGICAL WARFARE. a. Psychological warfare is conveyed to the enemy by the use of printed matter, films, and by radio. Each of these methods are discussed below:

(1) *Printed Matter.* It is hardly necessary to dwell on the enormous role which the written word has had in influencing the history of human thought. Newspapers, leaflets, handbills, booklets and books have proven in the past to be the backbone of psychological warfare and they will continue to be a primary media despite the increasing and expanding importance of the radio.

(2) *Films.* This medium, with its graphic appeal to the eye, is more and more widely used as one of the most persuasive means of swaying human thinking. In the movie-conscious United States, we have daily evidence of the influence which this medium can exert. And it takes a wide awake, discriminating and thoughtful mind to distinguish between truth and "hokum" in a motion picture. Following the invasion of Poland, the diabolically clever Nazi Propaganda Ministry arranged for films of those scenes of horror to be distributed as widely as possible in all countries which were to be eventual victims of German aggression. Foreign visitors of all categories were given special showings. We can readily believe that no small amount of the panic and paralysis caused in France by the German invasion in 1940 sprang from a visual memory of what had happened to Poland. For obvious reasons, this medium is of little use against the enemy in time of actual fighting. However, it can be of deadly effectiveness during the years of "cold war" which precede the period of military operations.

(3) *Radio a.* Students of mass psychology have reached the conclusion that the human mind is more affected by what it hears than by what it sees, that the appeal of a reasonable voice is greater than that of the most brilliant artistry or the most eloquent printed mater. German military psychologists made this observation early in the 1920's and subsequent laboratory research has confirmed their deductions. Thus, the radio has become the No. 1 medium for influencing public opinion and its influence will increase as technical improvements better its performance and expand the potential listening audiences. This primary medium is of such importance that the last chapter of this text will be devoted to the subject.

b. Psychological warfare themes may be conveyed forcibly by the three devices discussed below. These devices may be used in any or all of the mediums discussed in the preceding paragraph.

(1) *Slogans.* Single words or brief phrases which have an emotional content and convey to the hearer the suggestion of a whole idea. "Lebensraum" ("Living space") conveyed in a word Germany's expansionist

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dreams. "The Mediterranean, an Italian lake," expressed Italian ambition to recreate the Roman Empire. "Asia for the Asiatics" won for the Japanese many friends in other parts of the Orient.

(2) *Symbols.* Signs or figures which carry to the eye the same effect that slogans do to the ear. These are one of the oldest and most powerful ways of influencing public opinion. We are all familiar with the use made of the swastika by the Germans, of the hammer-and-sickle by the Russians, and the "V" made famous by Winston Churchill. We also recall how reverse use was made by our enemies of caricatures of Uncle Sam ("Uncle Shylock") and grotesque distortions of the face of President Roosevelt.

(3) *Music.* "Music hath charms to soothe the savage breast" and the hypnotic power of a haunting rhythm accompanied by simple, easily-memorized words is enormous. We are all conscious of the emotional appeal of "AMERICA," "THE STAR SPANGLED BANNER" and the "BATTLE HYMN OF THE REPUBLIC." For Nazi Germans "DEUTSCH UBER ALLES" and the "HORST WESSEL SONG" had the same appeal and "GIOVINEZZA" (Youth) helped "sell" fascism to the Italians. Students of United States history recall how JOHN BROWN'S BODY LIES A-MOULDIN' IN THE GRAVE" helped inflame emotions during our own Civil War.

24. PRINCIPLE OF REPETITION. A guiding principle of which the psychological warfare operator must never lose sight is repetition, repetition, repetition. A small number of carefully selected simple themes is preferable to a large number of over-subtle or complicated messages. Some appeal to the emotions and others to the reason; of the two classes, the former is more effective with a large number of people. On these themes the propagandist hammers, pounds and insists with every medium at his command. The form is changed frequently, the idea is dressed up in new clothing, but the basic theme remains the same and the intended victim should see it and hear it again, again, and again until he finally comes to accept its truth.

25. MASS HYPNOSIS. In conducting psychological warfare against a nation which has been subjected to totalitarian regimentation, it is important to remember always that such a nation does not think along the same lines as does the population of a democratic country. Every inclination toward independent thought has been crushed through systematic training; in its stead there has been substituted automatic response to fixed stimuli. Mass delusions can be induced; if one isolates a people, allows no outside corrective, and pounds away daily with press, radio and films, with fear and pseudo-enthusiasm, any delusion can be instilled into that people and it comes to accept as natural the most primitive acts. Such delusions, so carefully implanted, are difficult to correct. Reasoning no longer has any value, for a mind mesmerized by the lower type of thinking is deaf to

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thought on a higher level. If one tries to reason with a person who has been thus impregnated, he will sooner or later withdraw into his fortress of collective thinking and will hide behind some emotional slogan. The mass delusion which gives him the feeling of greatness and superiority is dearer to him than all personal consciousness. The technique of such ideological regimentation is based on that of hypnosis. There are a few simple slogans. These are repeated, day-in and day-out, in every conceivable form. The radio, the press, posters in the streets, public advertising—all say the same thing. In times of mass emotion, people are especially defenseless against mass suggestion. Such a people is no longer composed of reasoning individuals; it follows the thought pattern in which it has been trained since childhood.

**26. NEED FOR SKILLED AND CAREFUL PLANNING.** Psychological warfare is one of the most delicate and explosive of weapons and can prove a dangerous boomerang if placed in the hands of inexperienced operators. In normal military operations we are accustomed to thinking in terms of evaluation of the objective, screening of the intelligence, detailed preparation of the operation and the assignment of specialists to each phase of the mission—but there is often found the deluded impression that *anyone* can execute psychological warfare. On the contrary, a psychological warfare "mission" is just as complicated and requires (if it is to succeed) the same amount of calculated preparation, detailed integration and skilled execution. To assign any phase of the task to an unqualified or inexperienced operator is to invite failure of the entire mission. In psychological warfare, the effect of such a failure is even worse than in other operations because a long series of successful missions is necessary to "live down" in the mind of the enemy the amusement or ridicule occasioned by one single mistake.

**27. PRESTIGE OF PSYCHOLOGICAL WARFARE.** The achievements of psychological warfare during the past war were such that its usefulness and value are much more generally appreciated in this country than they were a decade ago. We observed how close Josef Goebbels came to persuading the world of the myth of Nazi invincibility and the hopelessness of our trying to overtake the Germans in the race for supremacy in the air. Our own successful efforts in this field awakened our people to the immense possibilities of clever and skillfully executed propaganda.

**28. ACTUAL EXTENT OF PSYCHOLOGICAL WARFARE'S CONTRIBUTION.** We can admit that propaganda, efficiently applied long in advance of an actual state of war and continued through the period of active fighting, is a deadly weapon of total war. But *just how much* can really be claimed for it? To what extent can psychological warfare (joined with economic and diplomatic activities to form the combination we call "political warfare") be expected to supplant or replace armies and navies?